

Part III – Administrative, Procedural and Miscellaneous

Section 415 Regulations and Preexisting Plans

Notice 2005-87

Purpose

This notice provides that when the final regulations under § 415 of the Internal Revenue Code are published, the grandfather rule of § 1.415(a)-1(g)(3) of the proposed regulations for preexisting benefits in defined benefit plans will be expanded.

Background

Section 415 of the Code provides various limitations on benefits under qualified defined benefit plans and annual additions under qualified defined contribution plans. The proposed regulations under § 415, issued May 31, 2005, provide comprehensive guidance regarding the limitations of § 415, including updates to the regulations for numerous statutory changes. The regulations are proposed to apply to limitation years beginning on or after January 1, 2007.

Section 1.415(a)-1(g)(3) of the proposed regulations provides a grandfather rule for preexisting benefits under which a defined benefit plan will be considered to satisfy the limitations of § 415(b) for a participant with respect to benefits accrued or payable under the plan as of the effective date of the final regulations. This grandfather rule applies only to benefits accrued pursuant to plan provisions that were adopted and in effect on May 31, 2005, and only if such plan provisions meet the requirements of statutory provisions, regulations, and other published guidance in effect on May 31, 2005.

Commentators have expressed concerns about the grandfather provision of the proposed regulations. Commentators asserted that plan sponsors should not be required to apply the final regulations before their effective date and noted that the May 31, 2005, date would effectively require them to apply the final regulations retroactively (since any benefit provided by a defined benefit plan adopted after May 31, 2005, or benefits attributable to a post-May 31, 2005, amendment will not be covered by the grandfather rule).

Expansion of Grandfather Rule for Preexisting Plans

The Treasury and Service intend that, when the regulations under § 415 are finalized, the May 31, 2005, date that is in the grandfather rule in §1.415(a)-1(g)(3) will be replaced with a date that is not earlier than the date of publication of the final regulations. Thus, in the interim period before final regulations are published, plan sponsors who adopt new plans and plan amendments will not be subject to the interpretations set forth in the final regulations with respect to benefits accrued prior to the effective date of the final regulations, if the plan provisions relating to § 415(b) meet the requirements of statutory provisions, final regulations and other published guidance in effect when the new plan or the new amendment is adopted. Additionally, in the interim period before final regulations are published, plan provisions will not be treated as failing to satisfy the requirements of § 415 merely because the plan's definition of compensation for a limitation year that is used for purposes of applying the limitations of section 415 reflects compensation for a plan year that is in excess of the limitation under section 401(a)(17) that applies to that plan year.

Drafting Information

The principal author of this notice is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance telephone service at (877) 829-5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday Through Friday. Ms. Herrmann can be reached at (202) 283-9888 (not a toll-free number).